



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,408	02/14/2006	Christophe Pierre Girard	403416/WEINSTEIN	4583
23548 7590 10/09/2009 LEYDIG VOIT & MAYER, LTD 700 THIRTEENTH ST. NW SUITE 300 WASHINGTON, DC 20005-3960				
EXAMINER				
BATTULA, PRADEEP CHOUDARY				
ART UNIT		PAPER NUMBER		
3725				
NOTIFICATION DATE		DELIVERY MODE		
10/09/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCpatent@leydig.com
Chgpatent@leydig.com
Chgpatent1@leydig.com

Office Action Summary

Application No.

10/539,408

Applicant(s)

GIRARD, CHRISTOPHE PIERRE

Examiner

PRADEEP C. BATTULA

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) 15-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is in reply to the response filed on June 9, 2009

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 2, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herlitz in view of Ho (U.S. 6,354,486).

In regards to Claim 1, Herlitz discloses a document filing folder 20 comprising: a cover 20 (Figure 1) including an (Figure 2; page on right of spiral) and a posterior sheet (Figure 2; page on left of spiral); a binding 18a joining the anterior and posterior sheets (Figure 2, Item 18a); and notebook pages securely connected to the binding (Figure 1; spiral binding is well known to securely bind sheets; Novelty section of previously provided attachments states the binding holds notebook pages), wherein a first sheet of the anterior and posterior sheets includes: first flap 33 located along the lower edge of the first sheet (Figure 2, Item 33); a second flap 32 extending along an entire lateral edge of the first sheet (Figure 2, Item 32 is shown to have connection along the entire lateral edge), Furthermore the flaps are capable of retaining pages which are bound by the spiral since section 35 of the flaps are glued to one another and therefore allowing flexing for insertion of pages (Attachment, Novelty section; sheets inside the notebook are disclosed and therefore notebook pages and are able to be stored in the formed

pocket due to the flexibility), wherein the flaps are adhered one on top of the other (Figure 2, Items 32, 33), toward the interior side of the first sheet, with the notebook pages capable of being held under the flaps folded towards the interior side of the first sheet (Attachment, Novelty Section; pages can be stored in the folded sections nothing is to prevent the bound papers from being inserted since the pocket is capable of holding the bound pages). Herlitz further discloses wherein the binding includes a spiral 18a (Figure 3, Item 18a; Herlitz), which therefore the notebook pages to be stored flat against the first sheet with the flaps folded toward the interior side of the first sheet with notebook pages under the first and second flaps.

Herlitz does not disclose wherein the first sheet of the anterior and posterior sheets includes: a flap respectively located along opposed upper edge of the first sheet; each of the first and second and third flaps having a first position folded, successively, other, towards an interior side of the first sheet, and each of the first, second and third flaps having a second position folded away from an interior side of the first sheet, wherein the notebook pages are in storage under the first and second and third flaps that are each in the first position and the notebook pages are fully accessible from the first, second and third flaps that are each in the second position; and closing means for keeping the filing folder closed with the notebook pages between the anterior and posterior sheets, the closing means including a rubber band attached to the first sheet, sliding relative to the first sheet through eyelets, and which can be placed over at least one corner of a second of the anterior sheet and the posterior sheet or which can be placed over the second sheet parallel to the binding.

Ho teaches of a document filing folder (Column 2, Lines 41 – 45; Figures 3 & 4) comprising: a cover including an anterior sheet 14 and a posterior sheet 15 (Column 2, Lines 41 – 45; Figure 3, Items 14, 15); wherein a first sheet of the anterior and posterior sheets includes: first and second flaps 17 respectively located along opposed lower and upper edges of the first sheet (Column 2, Lines 41 – 45; Figure 3, Items 17 shown along the entire length of the upper and lower edge); a third flap extending along an entire lateral edge of the first sheet 16 (Column 2, Lines 41 – 45; Figure 3, Item 16), each of the first and second and third flaps having a first position folded, successively, other, towards an interior side of the first sheet (Column 3, Lines 26 – 41; Figure 7 shows the flaps in the first position. Furthermore the flaps are structurally capable of being folded in any particular order; Figure 2 also shows the flaps in the first position where the flaps are not connected to one another in any manner), and each of the first, second and third flaps having a second position folded away from an interior side of the first sheet (Figure 3; Column 3, Lines 26 – 41 teaches of the attachment and Figure 7 shows this. The flaps can clearly be attached and detached; Figure 1 shows the flaps without the attachment structures in the unfolded state), wherein the notebook pages 20 are in storage under the first and second and third flaps that are each in the first position (Column 3, Lines 26 – 41; Figures 6 & 7, Item 20) and the notebook pages are fully accessible from the first, second and third flaps that are each in the second position (Figures 1 & 3); and closing means 153 for keeping the filing folder closed with the notebook pages between the anterior and posterior sheets (Column 2, Lines 41 – 45; Column 4, Lines 1 – 19; Figure 3, Item 153; Figure 4, Item 153), the closing means

including a rubber band attached to the first sheet (Column 2, Lines 41 – 45; Figure 3, Item 153), sliding relative to the first sheet through eyelets 150 (Column 4, Lines 10 – 13), and which can be placed over at least one corner of a second of the anterior sheet and the posterior sheet or which can be placed over the second sheet parallel to the binding (Column 4, Lines 1 – 19; Figure 4, Item 152). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the folder of Herlitz with the flaps and closing mechanism of Ho in order to provide a folder capable of the folder flaps to be adjusted to hold stacks of sheets in increasing size and securely hold the holder closed (Column 1, Lines 38 – 40).

In regards to Claim 2, Herlitz modified by Ho further discloses wherein the first sheet with the flaps is the posterior sheet (Figure 2 left of spiral in Herlitz; Figure 3, Item 15 in Ho).

In regards to Claim 13, Herlitz modified by Ho further discloses a structure capable of performing a function wherein a first portion of the notebook pages are in storage under the first and second flaps that are both in the first position (pages coming from the spiral can be held in between the sheets [Figure 3]) and a second portion of the notebook pages are accessible and are positioned above the first portion of the notebook pages and above the first and second flaps that are both in the first position (A portion of sheets can be held in the flaps and then another portion can go on top of the portion in the sheets. This is possible through the use of the spiral binding) and the first portion of the notebook pages is accessible from the first and second flaps that are both in the second position (They are fully accessible by opening/detachment of the flaps).

Response to Arguments

With respect to the argument that the modification would make the device of Herlitz unsatisfactory for its intended purpose, the Examiner respectfully disagrees. It is stated in the remarks that Herlitz has two flaps secured to one another by glue and the proposed modification would be unsuitable because Herlitz no longer forms a firm pocket in which to prevent lateral movement of loose, separated pages. As stated in the interview the, although the pages of Herlitz are separated, it is still capable of holding sheets that are held to the binding so the structure of Herlitz as prior art, with respect to the claim, is still proper. Furthermore, Ho clearly teaches of a firm pocket as all of the flaps are securely fastened to one another and when assembled a firm pocket is formed and prevents lateral movement due to the fastening of the pocket and secure holding of the folder by the bands. The left to right movement is still prevented by the binding of Herlitz. Also, the top access is not prevented as it is a well known practice not to remove sheets when a folder is closed and Ho clearly teaches of opening the folder and opening the flaps to gain access to the sheets. The unfastened flaps do not prevent any kind secure holding of loose sheets and do not prevent any kind of access to the sheets as Herlitz, nor Ho, nor the Applicant disclose top access required when the folder is closed.

With respect to the argument that the modification was based on hindsight reasoning by reading the claimed invention into Herlitz. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a

sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). It is further to be noted that needing flaps to adjust to stacks of sheets of changing size has been well known in the art and disclosed by the modifying reference of Ho in Column 1, Lines 38 - 40 where the expansible pocket with flaps is taught.

With respect to the argument that the Office Action failing to explain why it would have been obvious of ordinary skill in the art to modify Herlitz to store pages that are securely connected to the binding, the claim does not require such a motivation to be discussed. The method of use only needs to be discussed in the references and motivation in a method claim, it is clear from the disclosure and modification of Herlitz and Ho that the capability of holding the sheets in the pocket and simultaneously in the binding. Such was also discussed in the interview on January 8, 2009 where Ms. Lawley showed it was difficult with Herlitz alone but also possible and capable of holding sheets while held to the binding.

With respect to the argument that the modification failing to teach or suggest each and every element of the claim, the prior art of Ho clearly shows the foldable flaps and Herlitz shows sheets with spiral binding. The combination is just replacing one set of secured flaps for another set of secured flaps and one of ordinary skill in the art would clearly understand and foresee such a modification. The capability of holding the

sheets to the binding and simultaneously holding the sheets in a pocket is taught by Herlitz as discussed in the interview on January 8, 2009.

With respect to the argument that the modification would not have been made to one having ordinary skill in the art to arrive at the claimed invention, as stated above, the combination is just replacing one set of secured flaps for another set of secured flaps and one of ordinary skill in the art would clearly understand and foresee such a modification. Such types of substitution/modifications are practiced constantly by individuals having ordinary skill in the art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRADEEP C. BATTULA whose telephone number is (571)272-2142. The examiner can normally be reached on Mon. - Thurs. & alternating Fri. 7:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dana Ross can be reached on 571-272-4480. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. C. B./
Examiner, Art Unit 3725
October 5, 2009

/Dana Ross/
Supervisory Patent Examiner, Art Unit 3725